

SECTION .2800 – FLORIST: NURSERIES: GREENHOUSES

17 NCAC 07B .2801 FLORISTS: NURSERY AND GREENHOUSE OPERATORS

(a) "Nursery Stock" means flowers, trees, potted plants, shrubbery, and other plants grown by nurseries and greenhouse operators.

(b) Retail sales of nursery stock are subject to sales and use tax, unless exempt pursuant to Paragraph (f) of this Rule.

(c) Retail sales of planters, hoses, nozzles and sprayers, rain barrels, sprinklers and timers, fertilizer, insect and weed control, garden tools, birdbaths, and other tangible personal property are subject to sales and use tax, pursuant to G.S. 105-164.4.

(d) Producer of Nursery Stock. -- If a nursery or greenhouse operator is the producer of an article of nursery stock, the article is a product of a farm for the purposes of G.S. 105-164.13(4b). A nursery or greenhouse operator is the producer of nursery stock in either of the following circumstances:

- (1) The operator owns the article and grows the article from seed, cutting, or other similar propagation.
- (2) The operator purchases the article of nursery stock, does not sell the article during the planting season in which it was purchased, retains the article until at least the next planting season, and growth is added to the article by virtue of such retention.

(e) Determining Primary Business. -- A producer shall determine whether it is primarily a retail merchant as follows:

- (1) Determine the producer's total gross sales of products of a farm produced by the producer of nursery stock.
- (2) Determine the producer's total gross sales from sales not included in Subparagraph (1) of this Paragraph.
- (3) If the producer's gross sales determined in Subparagraph (2) of this Paragraph are greater than the gross sales determined in Subparagraph (1) of this Paragraph, the producer is primarily a retail merchant.
- (4) Producers that have more than one location shall determine if it is primarily a retail merchant for each location separately.
- (5) The total gross sales used to determine the classification as primarily a retail merchant shall include all sales without regard to any sales exempt from sales and use tax.
- (6) The classification shall remain in effect until the primary business determination has changed for a period of at least six months.

(f) Exempt Sales of Nursery Stock by a Producer. -- Nursery stock sold in its original state by the producer of the nursery stock is exempt from sales and use tax, pursuant to G.S. 105-164.13(4b), unless the producer is primarily a retail merchant.

(g) Sales by a Person that is Primarily a Retail Merchant. -- Pursuant to G.S. 105-164.4, a person that is primarily a retail merchant shall collect and remit sales and use tax on all retail sales of purchased and produced nursery stock.

(h) Real Property Contracts:

- (1) A person classified as primarily a retail merchant that withdraws nursery stock from their inventory to fulfill a real property contract to perform landscaping shall pay use tax on the nursery stock.
- (2) A producer not classified as primarily a retail merchant that withdraws nursery stock from their inventory to fulfill a real property contract to perform landscaping does not owe use tax if they are the producer of the nursery stock. If the person is not the producer of the nursery stock, the person shall pay use tax on the nursery stock.

(i) Record Keeping for Producers. -- Producers that make exempt sales and taxable sales shall maintain separate records of each. Failure to keep separate records in a manner that can be accurately and conveniently checked by the agents of the Secretary of Revenue subjects all sales to sales and use tax, pursuant to G.S. 105-164.4.

(j) Exempt Purchases. -- A nursery or greenhouse operator, including an operator that is primarily a retail merchant, that meets the requirements of a qualifying or conditional farmer is eligible for the exemption provided in G.S. 105-164.13E.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4H; 105-164.6; 105-164.13; 105-164.13E; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

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